

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
November 24, 2008 Session

CONNIE ERDMAN v. SATURN CORPORATION

**Direct Appeal from the Circuit Court for Maury County
No. 12016 Jim T. Hamilton, Judge**

**No. M2008-00281-WC-R3-WC - Mailed - March 27, 2009
Filed - June 10, 2009**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. On appeal, Employee contends that the trial court erred in two ways: first, in finding that Employee's permanent partial disability award should be capped at one and one-half times her medical impairment rating; and second, in finding that Employee is not entitled to reconsideration of a prior injury to her left shoulder. Because the evidence does not preponderate against the findings, we affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Circuit Court Affirmed**

JON KERRY BLACKWOOD, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and ALLEN W. WALLACE, SR. J., joined.

Larry R. McElhaney, II, Nashville, Tennessee, for the appellant Connie Erdman.

Nathaniel K. Cherry, Nashville, Tennessee, for the appellee Saturn Corporation.

MEMORANDUM OPINION

Factual and Procedural History

Connie Erdman ("Employee") was 62 years old at the time of trial. She has a high school education. She worked for General Motors in Michigan and then transferred to the Saturn plant in Tennessee. At the time she retired, she had worked for General Motors/Saturn ("Employer") for 26 years.

Employee testified that she performed two jobs for Employer. Initially, she worked on the “FAS in chassis” line and later in the “injection molding” line. Both jobs required overhead work. In November 2001, Employee injured her left shoulder while working for Employer. She had surgery and received a workers’ compensation settlement. She returned to work with no restrictions. After returning to work, Employee began working “third shift” for which she was paid a ten percent bonus. On February 9, 2006, she injured her right shoulder while working third shift. It is undisputed that her right shoulder injury was work-related.

Employee acknowledged that she returned to work on February 13, 2006, and worked with restrictions until March 16, 2006; she had surgery on her right shoulder on March 22, 2006. After surgery, Employee opted to retire under Employer’s voluntary attrition program in April 2006. She testified about her decision:

I made it because I really didn’t feel that I could do what I was doing when I hurt myself if I went back. And I really didn’t want to retire, I would have liked to have gotten – you know, retired [after thirty years].

...

But it came a time in my life that I felt I had to consider how I – how my – what my body was telling me and how I ached after work, and so I thought it was the best thing for me.

Upon being asked whether she would have retired had it not been for the right shoulder injury, Employee stated “No” and that she was “sure that [she] wouldn’t have retired.” She explained that she wanted to work “at least 27” years before retiring. At the time she elected to retire, she had worked for Employer only 26 years. Employee added that her left shoulder injury also influenced her decision to retire.

Employee acknowledged that she learned about the retirement package at a union meeting. She voluntarily signed the retirement package paperwork on April 12, 2006, and her retirement was effective on July 1, 2006. Accordingly, she never returned to work after her right shoulder surgery. She acknowledged that she did not know the final outcome of her right shoulder surgery at the time she elected to retire. She also acknowledged that, in addition to her shoulders, she had “other medical issues” including a knee replacement that was a “big issue” for her. She additionally acknowledged in a deposition taken relative to her left shoulder injury that she “tentatively plan[ned] to leave Saturn when [she was] 62 if possible.” Employee also acknowledged that she did not ask Employer whether there would be a job available for her after her return to work following her right shoulder surgery.

After retiring, Employee continued under her doctor’s care until August 30, 2006. At that time, she was released with a permanent restriction of no repetitive overhead work of more than five times per hour.

Elaine Long testified that she worked for Employer as an ADAPT coordinator. She explained that ADAPT assists employees in continuing to work with medical restrictions. Ms. Long testified

that, after Employee's right shoulder injury, ADAPT located nine different areas in the plant that could accommodate Employee with her seniority and medical restrictions as of March 13, 2006.

Ms. Long stated that Employee never returned to ADAPT after her right shoulder surgery and she never attempted to get placed in a job with her restrictions. Ms. Long also stated that, had Employee returned to work, she could have held an inspection job. There were third shift inspection jobs in August and September 2006. Ms. Long could not, however, state whether there was someone Employee could have "bumped" from a third shift inspection job.

Dr. Randall Davidson, an orthopedic surgeon, testified that he treated Employee for her right shoulder injury. As a result of her work, Employee suffered a full thickness tear of the rotator cuff. Dr. Davidson performed surgery to repair the tear on March 22, 2006. Employee reached maximum medical improvement on August 30, 2006. Dr. Davidson assigned an impairment rating of 8% to the body as a whole and assigned a permanent restriction of no repetitive overhead work. He testified that he had not seen Employee since releasing her.

Jerry Williams, an employee benefit representative for Employer, testified about the retirement program offered to employees. Employees had forty-five days after hearing the presentation in which to decide whether to take the program. If they decided to take the program, they had seven days to rescind. Mr. Williams also explained that employees who worked second and third shift were paid a "premium" or "shift differential" over and above what they would earn on first shift. He also acknowledged that if ADAPT placed an injured employee on work restrictions into a first shift position, the employee loses any shift differential he or she may have previously earned while working second or third shift.

After reviewing the medical depositions and listening to the in-court testimony, the trial court awarded Employee benefits based upon an 8% impairment to the body as a whole arising from an injury to her right shoulder. Employee's award was capped at 12%, or one and one-half times the impairment rating, for a lump sum award of \$31,824.00. The trial court denied Employee's request for reconsideration of her prior workers' compensation award for her left shoulder injury.

The trial court held that Employee's "reason for no longer being employed by either Saturn or General Motors is that [Employee] executed the special attrition plan package and voluntarily quit her position with General Motors on April 12, 2006. Therefore, any award for the injury to her right shoulder should be capped at 1.5 times the permanent impairment rating under T.C.A. § 50-6-241."

The trial court also held that Employee "cannot collect benefits under T.C.A. § 50-6-241 for reconsideration of her prior left shoulder award on the grounds that [she] voluntarily quit her employment for reasons unrelated to her left shoulder injury." In support of its holdings, the trial court found that Employee had not tried to make a meaningful return to work, nor had she offered a medical explanation for her failure to return. The trial court found that Employer "never had the opportunity to extend to [Employee] an offer to make a meaningful return to work because [Employee] had retired prior to her final release and prior to knowing the full extent of her injury. [Employee] could not attempt a meaningful return to work because she retired."

Standard of Review

_____ We review factual issues in a workers' compensation case de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court's factual findings, unless the preponderance of the evidence is otherwise. See Tenn. Code Ann. § 50-6-225(e)(2) (2008); Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004). When the trial court has seen the witnesses and heard the testimony, especially where issues of credibility and the weight of testimony are involved, the panel on appeal must extend considerable deference to the trial court's factual findings. Houser v. Bi-Lo, Inc., 36 S.W.3d 68, 71 (Tenn. 2001). Conclusions of law established by the trial court come to us without any presumption of correctness. Watt v. Lumbermens Mut. Cas. Ins. Co., 62 S.W.3d 123, 127 (Tenn. 2001).

Analysis

Right Shoulder Injury

While this case was pending, the Panel addressed a similar factual issue in Iacono v. Saturn Corp., No. M2008-00139-WC-R3-WC, 2009 WL 648962 (Tenn. Workers' Comp. Panel Mar. 12, 2009). In Iacono, the employee suffered bilateral shoulder injuries in January and February 2006. The employee had right shoulder surgery in March 2006. On April 11, 2006, the employee opted to take early retirement through Saturn's voluntary attrition program; his retirement took effect June 1, 2006. In July 2006, the employee had surgery on his left shoulder. Subsequently, the employee filed a complaint for workers' compensation benefits. Although the trial court found that the employee suffered two shoulder injuries, the court determined that his award was subject to the one and one-half multiplier found in Tennessee Code Annotated section 50-6-241(d)(1)(A). On appeal, this Panel affirmed the trial court's decision. Iacono, 2009 WL 648962 at *1.

Given the similarities between these two cases, we repeat our analysis in Iacono.

An employee who sustains a permanent partial disability as the result of a work-related injury is entitled to receive permanent partial disability benefits in accordance with Tennessee Code Annotated section 50-6-241. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008). If "the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury," the employee's permanent partial disability award is capped at two and one-half (2½) times, Tenn. Code Ann. § 50-6-241(a)(1) (injury before July 1, 2004), or one and one-half (1½) times, Id. § 50-6-241(d)(1)(A) (injury on or after July 1, 2004), the medical impairment rating. If a pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability award that the employee may receive is six (6) times the medical impairment rating. Tenn. Code Ann. §§ 50-6-241(b) & -241(d)(2)(A).

In determining whether to apply the lower statutory caps of Tennessee Code Annotated section 50-6-241, both the Supreme Court and Appeals Panels have looked to determine whether the employee has made a "meaningful return to work."

See Tryon, 254 S.W.3d at 328; Kellow v. TML Risk Mgmt. Pool, No. M2006-01573-WC-R3-WC, 2007 WL 5447468, at *4 (Tenn. Workers' Comp. Panel Oct. 29, 2007); Eldridge v. Putnam County Bd. of Educ., No. M2006-02046-WC-R3-WC, 2007 WL 2333036, at *5 (Tenn. Workers' Comp. Panel Aug. 17, 2007). Most recently, the Tennessee Supreme Court addressed the concept of "meaningful return to work" in Tryon:

When determining whether a particular employee had a meaningful return to work, the courts must assess the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to either return to or remain at work. The determination of the reasonableness of the actions of the employer and the employee depends on the facts of each case.

...

[Previous Supreme Court and Appeals Panel decisions] provide that an employee has not had a meaningful return to work if he or she returns to work but later resigns or retires for reasons that are reasonably related to his or her workplace injury. . . . If, however, the employee later retires or resigns for personal reasons or other reasons that are not reasonably related to his or her workplace injury, the employee has had a meaningful return to work.

Tryon, 254 S.W.3d at 328-29. (internal citation omitted); see Tenn. Code Ann. § 50-6-241(d)(1)(B)(iii)(a) (2005). For example, the Supreme Court and Appeals Panel have found that an employee, who resigned or retired after suffering a work-related injury, did not have a meaningful return to work when: (1) the employee was told by his physician to resign; (2) "the employee's workplace injury rendered the employee unable to perform his or her job"; (3) "the employer refused to accommodate the employee's work restrictions arising from the workplace injury"; and (4) "the employee's workplace injury caused too much pain to permit the employee to continue working." Tryon, 254 S.W.3d at 329 (footnotes omitted). In each of these instances, the court found that employee's retirement or resignation was "reasonably related" to the employee's workplace injury. Conversely, the Supreme Court and Appeals Panel have found that an employee, who resigned or retired after suffering a work-related injury, did have a meaningful return to work when the employee's decision to retire or resign was based on: (1) "the employee's unfounded anxiety about being transferred to a position that would exceed work restrictions"; (2) "the employee's belief that the employer was going to sell the business to someone who would fire the employee"; (3) the employee's interpersonal conflicts with co-workers"; (4) "a salary dispute unrelated to the employee's medical problems"; (5) "an employer's refusal for reasons unrelated to employee's workplace injury to accommodate the schedule of the employee's second job"; and (6) "the employee's decision to accept a better job." Id. at 329-330. In these instances, it was determined that the employee's departure from employment was not reasonably related to the workplace injury.

Iacono, 2009 WL 648902, at *5-6.

In light of Tennessee’s “meaningful return to work jurisprudence,” the pivotal question in the case presently before the Panel is whether Employee’s voluntary early retirement was “reasonably related” to her right shoulder injury. Tryon, 254 S.W.3d at 333; Hardin v. Royal & Sunalliance Ins., 104 S.W.3d 501, 505-06 (Tenn. 2003). The trial court held that Employee’s retirement was not related to her workplace injury such that she could avoid the statutory cap.

Employee testified that she decided to retire early because she “really didn’t feel that [she] could do what [she] was doing” at the time she injured her right shoulder. She added that “it came a time in [her] life that [she] felt [she] had to consider . . . what [her] body was telling [her] and how [she] ached after work.” The trial court was not persuaded by this explanation.

The evidence supports the trial court’s conclusion. Employee committed to taking early retirement less than a month after her right shoulder surgery. She made the decision before her doctor released her and before she knew what, if any, restrictions she was going to have. She also made her decision without learning whether Employer would be able to place her in a job that would accommodate any eventual restrictions.

Moreover, nothing in the record suggests that Employee’s treating physician, Dr. Davidson, informed Employee that she should retire or that she would not be able to continue working at Saturn after her right shoulder surgery. Cf. Bailey v. Krueger Ringier, Inc., No. 02S01-9409-CH-00061, 1995 WL 572056, at *3-4 (Tenn. Workers’ Comp. Panel May 17, 1995) (in determining that employee did not have a meaningful return to work, the Panel noted that employee’s physician advised employee to resign).

Employee foreclosed the possibility of allowing Employer the opportunity to return Employee to work. She did so prior to knowing the full extent of her injuries and prior to knowing what, if any, restrictions would be placed upon her. Additionally, she decided to retire without learning whether Employer would be able to accommodate any eventual restrictions. Accordingly, the evidence does not preponderate against the trial court’s conclusion that Employee’s decision to retire was not reasonably related to her right shoulder injury.

Reconsideration of Left Shoulder Injury

Because Employee’s left shoulder injury occurred in 2001, the applicable statute is Tennessee Code Annotated section 50-6-241(a)(2) (2005), which provides:

courts may reconsider, upon the filing of a new cause of action, the issue of industrial disability. Such reconsideration shall examine all pertinent factors, including lay and expert testimony, employee’s age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant’s disabled condition. Such reconsideration may be made in appropriate cases where the employee is no longer employed by the pre-injury employer and makes application to the appropriate court within one (1) year of the employee’s loss of

employment, if such loss of employment is within four hundred (400) weeks of the day the employee returned to work.

The Tennessee Supreme Court has held that this provision allows a court to reconsider a prior workers' compensation award where the employee resigns from his or her employment, but that the court may increase the prior award "only if the resignation was reasonably related to the injury." Hardin, 104 S.W.3d at 505-06.

Employee admitted that she returned to her job without restrictions after her left shoulder injury was corrected by surgery. She admitted that, after she returned to work, her left arm did not affect her ability to do her job.¹ She did state, however, that her left shoulder affected her decision to retire. When asked on direct examination why her left shoulder played a role in her decision to retire, Employee responded, "because I had lymphedema in that arm."

The trial court concluded that Employee's decision to retire was not related to her left shoulder injury and that she was therefore not entitled to a reconsideration of her prior workers' compensation award. The evidence does not preponderate against the trial court's ruling.

CONCLUSION

For the reasons stated above, we affirm the trial court's finding that Employee's permanent partial disability award should be capped at one and one-half (1½) times her medical impairment rating and that Employee is not entitled to reconsideration of her prior left shoulder injury. Costs of this appeal are taxed to Connie Erdman, and her surety, for which execution may issue if necessary.

JON KERRY BLACKWOOD, SENIOR JUDGE

¹ At some point after returning to work following her left shoulder surgery, Employee did begin to have left shoulder complications. These complications, however, were the result of her lymphedema, which Employee admitted was not related to her left shoulder injury. Instead, Employee's testimony implies that her lymphedema is related to a 1995 battle with breast cancer.

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ORDER

This case is before the Court upon the motion for review filed by Connie Erdman pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Connie Erdman, for which execution may issue if necessary.

PER CURIAM

CORNELIA A. CLARK, J., not participating